IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2222 of 1988

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CONSUMERS' PROTECTION CENTRE

Versus

STATE OF GUJARAT

Appearance:
MR DM THAKKAR for Petitioner
MRS MANISHA LAVKUMAR for Respondents

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/05/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

#. The petitioner, by way of this petition, has challenged the legality and validity of Sections 62 to 65 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act"), as also Rule 35 of the Bombay Public Trusts (Gujarat) Rules, 1961 (hereinafter referred to as "the Rules"), by invoking the provisions of Article 226 of the Constitution of India.

#. The petitioner-organization is floated for the protection of consumers' statutory rights, and as stated in the petition, the petitioner-organization takes up, interalia, certain public causes as public interest litigation, and the present petition is of public interest. The petitioner-organization is registered under the Societies Registration Act, 1860, and also under the Act.

#. The provisions of Sections 62 to 65 of the Act, which are under challenge, are provided in Chapter IX of the Act, and they are referable to `assessors'. Section 62 of the Act provides for the list of assessors, whereas section 63 of the Act provides for securing presence of the assessors by way of summons to attend the matter at a specified place. Section 64 of the Act deals with the cases in which the assessors are summoned, whereas Section 65 of the Act authorizes the competent authority as to the number of assessors to be called for help and assistance in defined and earmarked cases. The entire conspectus of the provisions incorporated in Sections 62 to 65 under the head of `Assessors' in Chapter IX of the Act would go to show that the legislature has enacted these provisions so as to get help and aid in discharge of functions by the competent authorities under the charity organization. In view of the nature, quality and type of cases to be decided by the competent authorities, viz. Charity Commissioner or Deputy or Assistant Charity Commissioner, it is provided in Section 65 of the Act that such authority may choose not less than 3 and not more than 5 assessors to aid and assist him. Further, it is provided that in any inquiry relating to religions denomination, the assessors chosen shall, as far as may be practicable, belong to the particular religious denomination. It is also provided that at the end of inquiry, the authority shall record the opinion of the assessors in writing, duly signed by the assessors, and that such opinion shall form part of the proceeding and due consideration shall be given to it in passing an order or arriving at a decision or making report in the inquiry. Therefore, obviously, the purpose and design with which such provisions are incorporated in the Act, is to render help and assistance to the officials of the

charity organization in view of diverse and multi faceted activities and inquiries.

#. During the course of hearing of this petition, it was brought to our notice that what is mainly complained of, by the petitioner in this petition, is the compulsion cast upon the persons who are summoned as assessors by the competent officials of the charity organization. In that regard, it has been contended that failure on the part of an assessor to attend upon the summons issued upon him under Section 63 to 65 of the Act, attracts penalty of Rs.500/= payable by such assessor. At the same time, an assessor who is summoned by the competent authority to attend the time and place specified under Section 65 of the Act is entitled for a meagre conveyance allowance, i.e. Rs.3/= per day for the assessors from the area of Greater Bombay and Rs.2/= per day for the assessors from other places, as per Rule 35 of the Rules. Section 35 of the Rules reads thus:

"35. Allowance to assessors under Section 65 -The assessors summoned shall be entitled to allowance as follows:-

(1) Local Assessors -- A conveyance to local assessors of Rs.3/= per day in Greater Bombay and Rs.2/= per day in other places.

(2) Assessors from outside -- (a) For journeys between places connected by rail, return second class fare, (b) For journeys between places connected by steamer, return fare by the upper class, if there are two classes; by the middle or second class; if there are more than two classes; (c) For journeys between places not connected by rail or steamer, actual expenses, subject to a maximum of annas 7 per mile, (d) a daily allowance of Rs.5 in Greater Bombay and Rs.3 elsewhere, for days of attendance including days required for the journey;

Provided that the Charity Commissioner or Deputy or Assistant Charity Commissioner may for reasons recorded in writing, in the case of any assessor, sanction allowances at such higher rates as he may deem fit."

#. In the above backdrop, the plea propounded by the petitioner in the petition is that the provisions of Section 62 to 65 of the Act as also of Rule 35 of the Rules, are clearly bad, illegal and violative of Articles

14, 19(1)(g), and 21 of the Constitution of India.

#. On behalf of respondents, the then Joint Secretary, Legal Department, Government of Gujarat, has filed affidavit-in-reply, and it has been interalia contended that the aforesaid provisions are neither illegal nor violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. According to the respondents, Rule 34(2) of the Rules provides for exemption from liability to serve as an assessor. It is submitted that in view of Rule 34(2)(f) of the Rules, the case of the petitioner that any person cannot be compelled to serve in a particular capacity is without any substance. It is also contended that the provisions relatable to the assessors have been validly enacted by the legislation, and it cannot be said that in exercise of these provisions, a person can be compelled to act contrary to his beliefs and wishes and can be compelled to act as an assessor. It is also denied that no guidelines are prescribed as to how the list of assessors is required to be prepared under the provisions of the Act and that policy of pick and choose would be adopted by the authorities because of these provisions. The allegations of the provisions being illegal and arbitrary are also countenanced. It is also denied that the challenged provisions are susceptible to cause delay in inquiries.

#. We have heard Mr.D.M.Thakkar, learned counsel appearing for the petitioner, who is appointed under the scheme of Legal Aid under the Legal Services Authorities Act, 1987, and Mrs.Manisha Lavkumar, learned Assistant Government Pleader on behalf of respondents. We have also examined and evaluated the legislative scheme, and the purpose and objects of the impugned provisions of the Act and Rules.

#. During the course of hearing, our attention was jointly invited by the learned counsel for the parties to the fact that the provisions of Sections 62 to 65 pertaining to the scheme of assessors in the Act have been deleted by the State of Maharashtra vide Maharashtra Act 22 of 1967. It was also jointly submitted before us that instead of going into the constitutionality and vires of the challenged provisions, it would be expedient and necessary to issue appropriate directions to the respondent-State in the light of legislative action taken by the State of Maharashtra of deleting those provisions, more particularly, when the same Act is applicable in Gujarat in letter and spirit upon its adoption by the State of Gujarat.

#. In view of the above, and more particularly, in view of the changed socio-economic and legal perceptions and environment prevalent after the gap of 52 years as the Act is of 1950, we are keeping the question of vires, and the issue of constitutionality raised originally in the petition, open, and deem it necessary to direct the State of Gujarat to consider and decide the object, design, utility, functional value, and requirement of the challenged provisions.

##. It is rightly said that nothing is constant but the change. It is equally true that law should be stable. However, it should not be standstill. No person, authority, organization, society, State, or for that purpose, nation, can afford to be oblivious of the changed circumstances and events, and fail to get adjusted with the changed circumstances, requirements, aspirations as those who do not fall in line with this concept, may not find place even in the waste paper basket in the history.

##. The core concept, and the main perception of enactment or a piece of legislation is designed in a manner to resolve disputes in the field of conflict management so as to do justice between the rival parties or groups. The State of Maharashtra has taken a lead in deleting those provisions in changed circumstances, and that too as early as in 1967, i.e. within seventeen years from the life of said legislation. The purpose and object for which the provisions under challenge have been deleted by another State, are relevant and the same also require consideration by the respondent-State.

##. We may also mention at this stage that jurisprudential philosophy and the concept of doctrine of destitute could have been resorted to or employed in the instant case in view of the fact that virtually, the challenged provisions of the Act and Rules are in non-use since long. However, in view of the joint submission that appropriate directions for consideration by the respondent-State for deletion or repeal of the challenged provisions be issued, we desist ourselves from meticulously examining and probing the aforesaid doctrine qua the provisions under challenge. It is heartening to note that on behalf of the respondents, it has been stated that on appropriate directions being issued, the provisions under challenge will be seriously examined and shall be given due consideration by the State Government for the purpose of either amendment or deletion of the said provisions appropriately by keeping in mind the action by the State of Maharashtra as back as in 1967.

We, therefore, decide not to go into the constitutionality and also do not consider the applicability of the aforesaid celebrated doctrine of destitute to the questioned provisions and think it expedient to direct the respondent-State to examine the usefulness, utility, continuity etc. of the questioned provisions in the light of changed socio-legal political issues and circumstances. In view of the assurance forthcoming from the respondent-State, we are confident that the respondent-State shall seriously consider and accord weightage to our recommendation by considering the provisions of the Act and Rules under challenge, expeditiously, within reasonable time, and in proper perspective.

##. Before parting with the judgment, we deem it imperative to place it on record, the help, assistance and service rendered by the advocates, particularly, the Mr.D.M.Thakkar, for helping the petitioner in espousing its cause by providing effective legal representation.

##. The petition and the Rule shall therefore stand disposed of in aforesaid terms. There shall be no order as to costs.

(J.N.Bhatt, Acting C.J.)

(K.A.Puj, J.)

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